

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte JEFFREY A. FRISCO and MICHAEL KEEN

Appeal No. 2006-0615  
Application No. 09/545,267

ON BRIEF

MAILED

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U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Before JERRY SMITH, DIXON, and BLANKENSHIP, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 32, 33, 35, 36, 39-42, 45 and 47, which constitute all the claims pending in this application.

The disclosed invention pertains to a method and apparatus for operating an aircraft in-flight entertainment system. One feature of the invention is that a passenger is permitted to select for viewing either one of a plurality of satellite programming channels or a moving image of the aircraft over a map.

Representative claim 32 is reproduced as follows:

32. An aircraft in-flight entertainment system comprising:

    a satellite television (TV) receiver for generating a plurality of programming channels;

    a moving map image generator for generating a flight information channel including a moving representation of the aircraft position on a map image, said moving map image generator comprising a processor for determining an aircraft position during flight, aircraft direction, aircraft speed, and aircraft altitude for display with the moving map image;

    a plurality of passenger seatback displays connected to said satellite TV receiver and said moving map image generator; and

    a respective passenger control unit associated with each passenger seatback display for permitting passenger selection of one of the programming channels and flight information channel for display thereon.

The examiner relies on the following references:

|                            |           |                       |
|----------------------------|-----------|-----------------------|
| Wakai et al. (Wakai)       | 5,973,722 | Oct. 26, 1999         |
| Sklar et al. (Sklar)       | 5,990,928 | Nov. 23, 1999         |
| Galipeau et al. (Galipeau) | 6,249,913 | June 19, 2001         |
|                            |           | (filed Oct. 04, 1999) |

Claims 32, 33, 35, 36, 39-42, 45 and 47 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Sklar in view of Galipeau and further in view of Wakai.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in the claims on appeal. Accordingly, we affirm.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole

or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

The examiner has explained how the claimed invention is deemed to be rendered obvious by the collective teachings of Sklar, Galipeau and Wakai [final rejection, pages 5-12;

incorporated into answer at page 3]. Appellants argue that the examiner has relied on improper hindsight reconstruction and that there is no proper motivation to modify the prior art references in the manner proposed by the examiner. Appellants assert that Sklar does not suggest providing a flight information channel to the passengers, Galipeau fails to teach that the passengers can select the flight information channel, and Wakai fails to disclose a processor for determining aircraft speed and altitude in addition to the aircraft's position displayed along the flight route or a satellite TV receiver. Appellants assert that the artisan would not have been motivated to modify Sklar to include a moving map image generator and displaying the claimed aircraft parameters without the benefit of appellants' specification [brief, pages 4-7].

The examiner responds that appellants' arguments point out individual deficiencies in the references with respect to teachings that they are not being relied on. The examiner points out that each alleged deficiency is clearly taught by one of the other applied references. The examiner notes that each of the applied prior art references relates to in-flight entertainment systems. The examiner finds that it would have been obvious to the artisan to have combined the satellite TV teachings of Sklar with the moving map image of Galipeau and Wakai in order to provide the passenger with all the known entertainment options that are available on aircraft [answer, pages 3-8].

We will sustain the examiner's rejection of the claims on appeal for essentially the reasons argued by the examiner in the answer. The individual deficiencies of the references argued by appellants are not material to the issue before us because all the claim limitations are present in the collective teachings of the references and the rejection is based on these collective teachings. Therefore, the only question remaining is whether the examiner has provided an appropriate rationale for combining the teachings of the applied references. We find the motivation provided by the examiner to be sufficient to support the rejection in this case. Specifically, we agree with the examiner that the artisan would have been motivated to combine the various entertainment features of the applied prior art into a single entertainment system so as to provide an enhanced entertainment system for the aircraft passenger. Such an aggregation of conventional entertainment features would have been obvious to the artisan even without a specific suggestion for such aggregation from within the various prior art references.

In summary, we have sustained the examiner's rejection of the claims on appeal. Therefore, the decision of the examiner rejecting claims 32, 33, 35, 36, 39-42, 45 and 47 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

**AFFIRMED**

JERRY SMITH )  
JERRY SMITH )  
Administrative Patent Judge )  
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JOSEPH L. DIXON )  
JOSEPH L. DIXON )  
Administrative Patent Judge )  
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HOWARD B. BLANKENSHIP )  
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JS/gw

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ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P.A.  
1401 CITRUS CENTER 255 SOUTH ORANGE AVENUE  
P.O. BOX 3791  
ORLANDO, FL 32802,3791